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6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**
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9 In the Matter of:

10 **Ruben Martinez, Jr.**

11 PC 4900 Claim No. 20-ECO-03

Proposed Decision

(Penal Code § 4900 et seq.)

12 **Introduction**

13 On January 15, 2020, Ruben Martinez, Jr. (Martinez) submitted an application for
14 compensation as an erroneously convicted person to the California Victim Compensation Board
15 (CalVCB) pursuant to Penal Code section 4900. The application is based upon Martinez's 12 years
16 of imprisonment for his 2008 convictions for armed robbery, for which Martinez was found to be
17 factually innocent. Martinez is represented by attorney Angela Berry. No appearance has been
18 requested by the California Attorney General. Senior Attorney Laura Simpton of CalVCB was
19 assigned to this matter. After reviewing the application and supporting documentation, CalVCB
20 recommends, in accordance with the automatic compensation provision of Penal Code section 4902,
21 that the Legislature appropriate \$635,600 as payment to Martinez for being wrongfully imprisoned for
22 4,540 days.

23 **Background**

24 Between 2005 and 2007, an auto body shop in Los Angeles was robbed on five separate
25 occasions, at gunpoint, by the same male perpetrator. The robberies specifically occurred on the
26 following dates: December 29, 2005; December 29, 2006; March 9, 2007; May 18, 2007; and May
27 31, 2007. Each time, the armed perpetrator forcibly took money from the company safe, as well as
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1 personal property from employees or customers. The only physical evidence recovered from any of
2 these five incidents consisted of a palm print left during the first robbery on December 25, 2005.¹

3 Martinez was arrested on June 1, 2007, and charged in Los Angeles County Superior Court
4 case number BA33642 with nine counts of second-degree robbery while personally armed with a
5 firearm, all of which arose from the five separate incidents at the same auto body shop.² Martinez's
6 arrest and subsequent conviction were entirely based upon eyewitness identifications from five
7 employees or customers. Notably, Martinez's palm print did not match the one left during the first
8 robbery, and no evidence in Martinez's possession tied him to the crimes. When first questioned by
9 police, Martinez waived his constitutional rights and insisted he had nothing to do with any of the
10 robberies. Martinez also presented alibi evidence from his wife, brother-in-law, and two supervisors
11 showing that he had been at work when the robberies occurred on December 29, 2006, and March 9,
12 2007.

13 On April 11, 2008, after the jury in Martinez's first trial was unable to reach a verdict, a second
14 jury convicted him as charged. On May 22, 2008, the court sentenced Martinez to a total term of 47
15 years and 8 months imprisonment. Thereafter, Martinez pursued appellate relief, which was denied,
16 as well as state and federal habeas relief, which was also denied.

17 Eventually, Martinez submitted a letter to the Conviction Review Unit (CRU) of the Los
18 Angeles District Attorney's Office (DA), requesting consideration of his case for factual innocence.
19 The DA's subsequent investigation uncovered additional alibi evidence that "unmistakably"
20 demonstrated "Martinez was working at job sites far removed from the crime scenes when the
21 December 29, 2006 and March 9, 2007 robberies were committed."³ This evidence included
22 interviews from eight fellow employees, as well as time cards, paystubs, and other employment
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24 ¹ This factual summary is based upon the application and supporting documents, as well as the
25 decisions in *People v. Ruben Martinez, Jr.*, California Court of Appeal, Second District, case number
26 B208143, decided March 18, 2009, and *Martinez Jr. v. McEwen*, United States District Court, Central
27 District of California, case number CV-11-4617-AG(OP), decided March 29, 2012. (See Cal. Code
28 Reg., tit. 2, § 617.8, subd. (b) [permitting hearing officer to take judicial notice under Evid. Code, § 452
of any federal or state court record].)

² Pen. Code, §§ 211 (robbery); 12022.53, subd. (b) (gun enhancement).

³ Application Ex. E (11/7/19 DA letter brief), at pp. 3-4.

1 documentation that verified Martinez had been working when both robberies occurred. Because the
2 same perpetrator “clearly” committed all five robberies and it was not possible for Martinez to have
3 committed at least two of those, the DA lost confidence in all of Martinez’s robbery convictions.

4 On November 5, 2019, upon the DA’s motion in the Los Angeles County Superior Court,
5 Martinez was released from prison on his own recognizance, after having been imprisoned for over
6 12 years.⁴ Two days later on November 7, 2019, the DA moved to vacate Martinez’s robbery
7 convictions, dismiss with prejudice the underlying case number BA323642, and issue a factual finding
8 of innocence. Appointed counsel for Martinez joined the motion.

9 At a hearing on November 12, 2019, the court granted the requested relief. Specifically, the
10 court granted habeas relief to vacate all nine of Martinez’s robbery convictions in case number
11 BA323642. In addition, the court ordered the entire case dismissed with prejudice in the interests of
12 justice pursuant to Penal Code section 1385. Finally, the court expressly found, pursuant to Penal
13 Code section 1485.5, “the defendant to be factually innocent in each of all the charges in case
14 BA323642...”⁵

15 On January 15, 2020, just over 60 days after his convictions were vacated, Martinez
16 submitted the underlying application for compensation as an erroneously convicted person under
17 Penal Code section 4900. Based upon the superior court’s finding of factual innocence, Martinez
18 requested an automatic recommendation of compensation for \$635,600, representing \$140 for each
19 of the 4,540 days that he was wrongfully imprisoned.

20 **Determination of Issues**

21 Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned
22 for a felony offense, to apply for compensation from CalVCB.⁶ The application must be submitted at
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26 ⁴ As confirmed by counsel, the entire duration of this imprisonment was solely attributable to his
27 erroneous convictions for robbery.

28 ⁵ App. Ex. D (11/12/19 hearing) at p. 4.

⁶ Pen. Code, § 4900.

1 least 60 days following reversal of a conviction or grant of habeas relief, and no more than 10 years
2 after release from custody or dismissal of charges.⁷

3 Once an application has been properly filed, CalVCB typically requests a written response from
4 the Attorney General pursuant to Penal Code section 4902, and then an informal evidentiary hearing
5 ensues in accordance with Penal Code section 4903.⁸ Under Penal Code section 1485.5, CalVCB is
6 bound by any “express factual findings” rendered by a court when granting habeas relief, vacating a
7 conviction, or issuing a certificate of factual innocence.⁹ Nonetheless, the claimant bears the burden to
8 prove, by a preponderance of the evidence, that (1) the crime with which he was charged was either
9 not committed at all, or, if committed, was not committed by him, and (2) he sustained injury through his
10 erroneous conviction and imprisonment.¹⁰

11 If the claimant satisfies his burden of persuasion for both elements, then pursuant to Penal
12 Code section 4904, CalVCB shall recommend to the Legislature an award of compensation. Under
13 Penal Code section 4904, compensation is calculated at the rate of \$140 per day for pre-and post-
14 conviction confinement.¹¹

15 An exception to CalVCB’s standard procedure occurs when a claimant has obtained a
16 finding of factual innocence for each and every conviction underlying his incarceration. As set
17 forth in Penal Code section 1485.55:

18 In a contested proceeding, if the court has granted a writ of habeas corpus or when,
19 pursuant to Section 1473.6, the court vacates a judgment, and if the court has found that
20 the person is factually innocent, that finding shall be binding on the California Victim
21 Compensation Board for a claim presented to the board, and upon application by the
22 person, the board shall, without a hearing, recommend to the Legislature that an
23 appropriation be made and the claim paid pursuant to Section 4904.¹²

24 ⁷ Pen. Code, § 4901.

25 ⁸ Pen. Code, §§ 4902, subds. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

26 ⁹ Pen. Code, § 1485.5, subd. (c).

27 ¹⁰ Pen. Code, §§ 4903, subd. (a), 4904.

28 ¹¹ Pen. Code, § 4904, added by Stats.2015, c. 422 (S.B.635), § 1, eff. Jan. 1, 2016.

¹² Pen. Code, § 1485.55, subd. (a).

1 In effect, section 1485.55 compels CalVCB to assume both requisite elements of innocence and injury
2 for a successful claim under Penal Code section 4900 and to recommend compensation accordingly.

3 This construction is confirmed by Penal Code section 4902, which provides in relevant part:

4 “If the provisions of Sections 851.865 or 1485.55 apply in any claim, the California Victim
5 Compensation Board shall, within 30 days of the presentation of the claim, calculate the
6 compensation for the claimant pursuant to Section 4904 and recommend to the
Legislature payment of that sum.”¹³

7 Consequently, not only must CalVCB automatically recommend payment without a hearing or response
8 from the Attorney General whenever a claimant has obtained the requisite findings of factual
9 innocence, but CalVCB must do so within 30 days after the application is filed.

10 Here, Martinez timely submitted his application for compensation just over 60 days after his
11 robbery convictions had been reversed and the underlying case dismissed with prejudice. By then,
12 Martinez had been imprisoned a total of 4,540 days. This period of confinement consists of 354 days
13 pre-conviction from June 1, 2007, to May 20, 2008, plus an additional 4,186 days post-conviction from
14 May 20, 2008, to November 5, 2019. The entire duration of Martinez’s incarceration was solely
15 attributable to his robbery convictions in case number BA323642, and no other convictions or
16 sentences were imposed or stayed at any time.

17 The Los Angeles Superior Court vacated Martinez’s convictions based upon new evidence that
18 clearly demonstrated Martinez’s alibi. As conceded by the DA, the same perpetrator “unmistakably”
19 robbed the auto body shop on five separate occasions, yet on two of those occasions, Martinez was at
20 work. Because he could not have committed all of the robberies, he necessarily did not commit any.
21 Based upon the DA’s concession, the court found, by a preponderance of the evidence, that Martinez
22 was factually innocent. Consequently, Penal Code section 1485.55 applies. CalVCB unequivocally
23 accepts that Martinez is actually innocent of all nine robbery convictions for which he was erroneously
24 incarcerated over 12 years. CalVCB recognizes that, but for these convictions, Martinez would not
25 have spent 4,540 days “illegally behind bars, away from society, employment, and [his] loved ones.”¹⁴

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27 ¹³ Pen. Code, § 4902, subd. (a).

28 ¹⁴ *Holmes v. California Victim Compensation & Government Claims Bd.* (2015) 239 Cal.App.4th 1400.

1 Therefore, Martinez is entitled to a recommendation of compensation in the amount of \$635,600,
2 representing \$140 for each day of his erroneous incarceration.

3 **Conclusion**

4 CalVCB hereby grants Martinez's application for compensation under Penal Code section 4900
5 as mandated by Penal Code section 1485.55 and, therefore, recommends that the Legislature
6 appropriate \$635,600 as payment to Martinez for his 4,540 days of erroneous incarceration.

7 Date: January 24, 2020

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9 Laura Simpton
10 Senior Attorney
11 California Victim Compensation Board
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9 In the Matter of:

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11 PC 4900 Claim No. 20-ECO-03

Notice of Decision

(Penal Code § 4900 et seq.)

12 On February 20, 2020, the California Victim Compensation Board adopted the attached
13 Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.
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15 Date: February 24, 2020

16 Michelle Greer
17 Board Liaison
18 California Victim Compensation Board
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